

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|------------------------------------|--------------------|--------------------------------------|
| DANIEL R. SMITH, |) | |
| |) | Civil Action No. 00-1281 |
| | Plaintiff, |) |
| |) | |
| V. |) | Judge Arthur J. Schwab |
| |) | Mag. Judge Francis X. Caiazza |
| SUPERINTENDENT PHILIP L. |) | |
| JOHNSON; PUBLICATION REVIEW |) | |
| COMMITTEE TIM G. COLLINS, |) | |
| |) | |
| | Defendants. |) |
| | | Electronically filed. |

**MOTION FOR EXTENSION OF TIME TO FILE
MOTION FOR SUMMARY JUDGMENT**

AND NOW, come the defendants, Superintendent Philip L. Johnson and Publication Review Committee Tim G. Collins, by their attorneys, Thomas W. Corbett, Jr., Attorney General, Mariah L. Passarelli, Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and respectfully submit the following:

1. Plaintiff, Daniel R. Smith, inmate number BM-1187, is a *pro se* prisoner, currently in the custody of the Pennsylvania Department of Corrections (DOC) in the State Correctional Institution at Fayette.

2. After a long procedural odyssey that need not be recounted here, the Court granted the defendants' [Docket 29] Motion for Summary Judgment as to Plaintiff's sole remaining claim – that his First Amendment free exercise rights had been violated by the DOC's prohibition on his receipt of a particular publication. (See Doc. # 38).

3. The Plaintiff appealed this grant of summary judgment to the Third Circuit, where the matter was docketed at 03-2014.¹ (See Doc. # 39).

4. The Third Circuit Court affirmed the District Court's Order granting of summary judgment on First Amendment grounds, but remanded the case for consideration under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, et seq. (See Doc. # 46).

5. Upon return of the record from the Appellate Court, this Honorable Court entered a Case Management Order directing that motions for summary judgment be filed by February 20, 2007. (See Doc. # 47). This motion is filed in response thereto.

6. The defendants intend to file a Motion for Summary Judgment arguing that they are entitled to qualified immunity with regard to an RLUIPA claim, consistent with the opinion in Scott v. Beard. 2006 WL 2645150 (M.D.Pa. Sept. 14, 2006) (defendant-corrections officials were entitled to qualified immunity with regard to the inmate-plaintiff's claim that their denial of an April, 2000 religious accommodation violated RLUIPA because, at that point, RLUIPA had not yet been upheld as constitutional by the Third Circuit or United States Supreme Court and RLUIPA's nearly identical predecessor, the Religious Freedom Restoration Act (RFRA) had already been deemed unconstitutional). See also, Ragland v. Angelone, 420 F.Supp.2d 507 (W.D.Va. 2006).

7. However, an extension of time is requested so that the DOC can re-examine the subject materials (i.e., the books that Plaintiff claims to have been unlawfully denied) and determine whether or not Plaintiff is entitled to possess these

¹ Plaintiff was appointed counsel for the appeal, but returns to this court proceeding *pro se*. (See Doc. # 41).

materials –or some portion thereof– under the heightened standard now applicable under RLUIPA.

8. This request is not intended to prejudice the Plaintiff in any way, nor is it believed that such prejudice will occur.

WHEREFORE, the defendants request an extension of time until April 1, 2007 in which to file their Motion for Summary judgment.

Respectfully submitted,

Thomas W. Corbett, Jr.
Attorney General

BY: /s/ Mariah L. Passarelli
MARIAH L. PASSARELLI
Deputy Attorney General
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Date: February 16, 2007

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Motion for Extension of Time to File Motion for Summary Judgment** was electronically filed with the Court and served upon the following via first-class mail:

DANIEL R. SMITH
BM-1187
SCI-Fayette
P.O. Box 9999
LaBelle, PA 15450-2200

/s/ Mariah L. Passarelli
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